IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
WRIT PETITION NO.2069 OF 2005

Kishanchand Roopchand & Anr. .. Petitioners

Vs.

Smt.Surangi Jitendra Mehta & Ors.. Respondents

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Shri A.K.Abhyankar, Advocate i/b M/s.Kiran Jain & Co. for the petitioners.

Shri P.S.Dani with Anil Gala, Advocates for the respondent Nos.1 and 2.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 8th APRIL, 2005.

P.C.

1. On oral request by the learned Advocate for the petitioner, the name of the respondent No.3 is ordered to be deleted.

2. Heard, Rule. By consent, the rule is made returnable forthwith. Perused the records.

3. The petitioners challenge the impugned order dated 28th March, 2005 mainly on the ground that inspite of the directions given under the Order dated

19th October, 2004 in Writ Petition No.5095 of 2004 that the recording of evidence has to commence from April, 2005 and hence allowing the parties to complete all the preliminary requirements including the filing of list of witnesses and documents on or before 31st March, 2005, the trial Court has, in fact, preponed the date of recording of evidence while directing the petitioners to file affidavit of evidence on or before 31st March, 2005. The imposition of the costs in that regard was also sought to be challenged.

4. The learned Advocate for the respondent Nos.1 and 2, on the other hand, has submitted that the issues were framed by the trial Court in the month of February, 2005 itself, and the petitioners had sufficient time to prepare affidavit of evidence and therefore, there is no justification in making any grievance in relation to the impugned order.

5. Once it is apparent that the parties were allowed to file their list of witnesses and documents latest by 31st March, 2005, certainly the trial Court could not have preponed the date for filing of an affidavit of evidence by the petitioners from April, 2005 to 31st March, 2005. Even though the preponement of the date for filing of an affidavit of evidence is

by one day, that certainly would be contrary to the order passed by this Court. At the same time, the learned Advocate for the respondents is justified in submitting that considering the fact that the petitioners had sufficient time to prepare affidavit of evidence after the issues in the matter having been framed in the month of February last itself, no fault can be found with the impugned order passed by the trial Court as regards the imposition of costs for the delay in producing the affidavit of evidence on the part of the petitioners.

6. In any case, without going into the legality and propriety of the impugned order any further, suffice to observe that the petitioners shall file affidavit of evidence latest by 25th April, 2005 along with the payment of costs of Rs.10,000/-. The copies of the affidavit of evidence shall be furnished to the respondents atleast three days in advance. In case of failure on the part of the petitioners to file affidavit of evidence on or before 25th April, 2005, the evidence on behalf of the petitioners shall stand concluded and closed without any further order being required in that regard by the trial Court. Considering the fact that the trial Court has been directed to dispose of the matters as expeditiously as

possible, the trial Court shall endeavour to proceed with recording of evidence even during the vacation period, in case there is any Vacation Judge to preside over the Court.

7. With the above directions, the petition is disposed of. Rule is made absolute with no order as to costs.

(R.M.S.Khandeparkar, J)